IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6072 OF 2001

1) Venubai Gulab Bhoite, Aged 60)
Yrs., Occu: Agriculturist,)
R/o. Loni, Tal. Khandala,)
Dist. Satara.)
2) Vitthal Shankar Salunkhe,)
aged 56 yrs.,)
Occ: Agriculturist,)
R/o. Bhade, Tal. Khandala,)
Dist. Satara. ...)... Petitioners.

Versus

1) The State of Maharashtra,)
The Secretary Under)
resettlement, Mantralaya,)
Mumbai. ... ..)
2) District Resettlement Officer)
/District Collector,Satara.)
3) Special Land Acquisition)
Officer No.19, Satara.)
4) Gunabai Murlidhar Jagtap,)

Aged 67 yrs.,)
Occ.: Agriculturist,)
R/o. Vaki, Tal. Baramati,)
Dist. Pune. ....)... Respondents.

Mr. S. P. Thorat for the Petitioners.
Mr. C. R. Sonawane, AGP for Respondents.

CORAM : V.G. PALSHIKAR, and
V.R.KINGAONKAR, JJ.
DATED : 28TH FEBRUARY, 2006.

J U D G E M E N T (Per Kingaonkar,J.) :

By this petition, both the petitioners impugn land acquisition proceedings pertaining to acquisition of land bearing Gat No.217 situate at Village Bhade, Tal. Khandala, Dist. Satara.

2. Briefly stated, the Petitioners' case is that their ancestral lands were divided in pursuance to

family partition before commencement of the acquisition proceedings. They along with Respondent No.5 held only 1H. 44R. (3A. 24 gunthas) land as indicated under Consent Decree passed in Civil Suit (Regular Civil Suit No. 130 of 1988) filed by Petitioner No.1 against other members of Hindu Joint Family. Though the Resettlement and Revenue Authorities were having knowledge about the partition decree, yet, they did not effect mutation of separate holdings of each shareholder. The Petitioners were erroneously shown as holders of 4H. 85R. land in the 7/12 record. The proceedings for acquisition of land Gat No.217 were commenced by the Respondents. A Notice under Section 4 of the Land Acquisition Act was issued on 6th June, 1995. Thereafter Notification was lateron issued under Section 6 of the said Act. The Petitioners objected to the notice under Section 4(i) but it was of no avail. The Petitioners allege that their land is less than 3 acres as per the Consent Decree dated 16th January, 1989 which was passed prior to Notification under Section 11 of the Resettlement Act and as such the small holding could not be acquired. They further allege that they were not given opportunity of hearing under Section 5A of the Land Acquisition Act, 1894 and as such the proceedings

are rendered illegal. They allege that the entire acquisition proceedings are illegal and unconstitutional. Hence the petition.

3. Respondent No.3 / Special Land Acquisition Officer filed affidavit in reply. It is contended that the provisions of Resettlement Act have been made applicable to Village Bhade as on 5th February, 1986 and then owner of the land, namely, Vithal Shankar Salunkhe was holder of 4.18 H. land recorded against his name in the revenue record. Out of land Gat No.217, area admeasuring 0.54 H. came to be acquired as per the proposal sent by the District Resettlement Officer / District Collector, Satara. It is contended that notice under Section 4(i) was issued to the land holder, which was objected to on the ground of alleged partition. It is further contended that so called partition is after thought and cannot be considered to nullify the acquisition proceedings which were commenced prior to the consent decree. It is denied that there was any irregularity committed while finalising the acquisition proceedings. Consequently, the Respondent Nos.1 to 3 sought dismissal of the petition.

4. We have heard learned Counsels for the parties. On behalf of the Petitioners, learned Counsel Shri S. P. Thorat contended that the acquisition proceedings are vitiated for the reason that Respondent No.3 failed to consider distribution of agricultural land as per the partition decree. He argued that the Notification under Section 6 of the Land Acquisition Act was issued after one year from the date of notice under Section 4(i) of the said Act and as such acquisition is barred by limitation. He submitted that opportunity of hearing was not given to the Petitioners and infraction of Section 5-A of Land Acquisition Act, 1894 is sufficient ground for quashing the Notification issued under Section 6 of the Act. He urged to set aside the impugned Notification issued under Section 6 of the said Act and the proceedings of acquisition. On the other hand, learned Additional Government Pleader for Respondent Nos.1 to 3 submitted that the contentions raised by the Petitioners are untenable.

5. Now, it is difficult to say that the consent decree for partition of the land could create any legal embargo on acquisition proceedings. The consent decree in Regular Civil Suit No.130 of 1988 came to be

drawn on 16th January, 1989. The Maharashtra Resettlement of Project Displaced Persons Act, 1976 was made applicable with effect from 5th February, 1986 as is evident from the Government Gazette dated 5th February, 1986. Obviously, the subsequent act of alleged partition under the consent decree is of no avail and cannot be taken into consideration. There is no reliable evidence on record to show that actual division of the agricultural properties was made prior to applicability of the Maharashtra Resettlement of Project Displaced Persons Act, 1976 (for short "Resettlement Act") for the area in which the agricultural properties of the Petitioners are situated. The Petitioners filed a copy of application dated 3rd December, 1985 in support of the contention that holding of the Petitioners is of 0.54 R. That cannot be treated as a gospel truth since certified copies of the relevant proceedings are also not produced in support of such contention. Needless to say that the contention of the Petitioners that their land was less than 3 Acres as on the date of Notification under Section 11 of the Resettlement Act fails.

6. The record shows that Notification under Section 6

was made within period of one year from the date of Notice issued under Section 4(i) of the Land Acquisition Act, 1894. The acquisition proceedings can not be termed as illegal in view of this factual position.

7. The Respondent No.3 states that the objection raised by land holder was enquired into but was rejected and final Notification under Section 6 was issued by the Commissioner on 19th September, 1998. It is manifest that enquiry was held while determining the objection raised by the land holder for the acquisition of land in question. It is well settled that, unless otherwise shown, the presumption is that such hearing was given to the land holder while determining the objection raised by him. There is no substantial reason to hold that no hearing was given to the land holder at the relevant time. Beyond the contentions raised in the petition, there is no substratum to hold that no opportunity of hearing was given to the land holder. Even assuming for a moment that opportunity of hearing was not given under Section 5-A of the Land Acquisition Act, 1894, then also it cannot be regarded as a sufficient ground to quash the Notification issued under Section 6.

8. On facts of the present case, we are inclined to hold that the Notification issued under Section 6 of the Land Acquisition Act is quite legal, proper and valid.

9. In the result, we find no substance in the petition and as such the same is dismissed. Rule discharged. No order as to costs.

Sd/-

(V. G. PALSHIKAR, J.)

Sd/-

(V. R. KINGAONKAR, J.)